Davis Wright Tremaine LLP

Suite 2300
777 108th Avenue NE
Bellevue, WA 98004-5149

425.646.6100 tel
425.646.6199 fax

January 19, 2017

SUBMITTED VIA FOIA ONLINE

Jana Schneider
Freedom of Information Act Coordinator
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue
Seattle, WA 98101

Re: FOIA Request for Quendall Terminals

Ms. Schneider:

On behalf of Quendall Terminals, please accept this letter as a formal request for copies of certain records in the U.S. Environmental Protection Agency's ("EPA's") possession concerning Quendall Terminals, located at 4503 Lake Washington Boulevard North, Renton, WA (the "Site). We request that EPA produce all documents concerning the unrecovered response costs of approximately $456,519.00 associated with conducting or overseeing environmental response actions with respect to the Quendall Site, as referenced in paragraph 96 of the attached Proof of Claim of the United States of America.

Please forward copies of this information to me, along with your invoice for the costs incurred in responding to this request, and I will see that you are promptly reimbursed.

Thank you for your assistance with this request. If you have any questions, please feel free to call me at (425) 646-6124 or Ms. Lynn Manolopoulos at (425) 646-6146.

Very truly yours,

Davis Wright Tremaine LLP

Margaret Laketa
Paralegal

Enclosure: Proof of Claim

DWT 31130321v2 0032695-000004

United States Bankruptcy Court for the District of Delaware

Indicate Debtor against which you assert a claim by checking the appropriate box below. **(Check only one Debtor per claim form.)**

- ☐ Vertellus Specialties Holdings Corp. (Case No. 16-11289)
- ☑ Vertellus Specialties Inc. (Case No. 16-11290)
- ☐ Vertellus Agriculture & Nutrition Specialties LLC (Case No. 16-11291)
- ☐ Tibbs Avenue Company (Case No. 16-11292)
- ☐ Vertellus Specialties PA LLC (Case No. 16-11293)
- ☐ Vertellus Health & Specialty Products LLC (Case No. 16-11294)
- ☐ Vertellus Specialties MI LLC (Case No. 16-11295)
- ☐ Vertellus Performance Materials Inc. (Case No. 16-11296)
- ☐ Rutherford Chemicals LLC (Case No. 16-11297)
- ☐ Solar Aluminum Technology Services (d/b/a S.A.L.T.S.) (Case No. 16-11298)
- ☐ MRM Toluic Company, Inc. (Case No. 16-11299)

Official Form 410
Proof of Claim

04/16

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Other than a claim under 11 U.S.C. § 503(b)(9), this form should not be used to make a claim for an administrative expense arising after the commencement of the case.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed.

Part 1: Identify the Claim

1. Who is the current creditor?

United States of America on behalf of EPA, NOAA and DOI
Name of the current creditor (the person or entity to be paid for this claim)

Other names the creditor used with the debtor _____

2. Has this claim been acquired from someone else?

☑ No
☐ Yes. From whom? _____

3. Where should notices and payments to the creditor be sent?

Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	**Where should payments to the creditor be sent?** (if different)
Cara Mroczek & Sean Carman U.S. Dept of Justice Name	Name
Environmental Enforcement Section PO Box 7611 Number Street	Number Street
Washington DC 20044 City State ZIP Code	City State ZIP Code
Country	Country
Contact phone 202-514-1447	Contact phone
Contact email cara.mroczek@usdoj.gov	Contact email

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

_ _

4. Does this claim amend one already filed?

☑ No
☐ Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY

5. Do you know if anyone else has filed a proof of claim for this claim?

☐ No
☑ Yes. Who made the earlier filing? Union Pacific for the Joppa Site in Joppa, IL

16112901611290000000000006

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**
   - [x] No
   - [ ] Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ___ ___ ___ ___

7. **How much is the claim?** $ See attached. **Does this amount include interest or other charges?**
   - [ ] No
   - [ ] Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**
   Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
   Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
   Limit disclosing information that is entitled to privacy, such as health care information.
   Environmental - see attached

   RECEIVED
   NOV 29 2016
   KURTZMANCARSONCONSULTANTS

9. **Is all or part of the claim secured?**
   - [ ] No
   - [x] Yes. The claim is secured by a lien on property.

   Nature of property:
   - [ ] Real estate: If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
   - [ ] Motor vehicle
   - [x] Other. Describe: See attached

   Basis for perfection: _____
   Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

   Value of property: $_____
   Amount of the claim that is secured: $_____
   Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amount should match the amount in line 7.)

   Amount necessary to cure any default as of the date of the petition: $_____

   Annual Interest Rate (when case was filed)_____%
   - [ ] Fixed
   - [ ] Variable

10. **Is this claim based on a lease?**
    - [x] No
    - [ ] Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**
    - [ ] No
    - [x] Yes. Identify the property: see attached

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☒ No

☐ Yes. *Check all that apply:* **Amount entitled to priority**

- ☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B). $_____
- ☐ Up to $2,850* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7). $_____
- ☐ Wages, salaries, or commissions (up to $12,850*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4). $_____
- ☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8). $_____
- ☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5). $_____
- ☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies. $_____

* Amounts are subject to adjustment on 4/01/19 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?

☒ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

$_____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

RECEIVED
NOV 29 2016
KURTZMAN CARSON CONSULTANTS

☐ I am the creditor.

☒ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 11 / 21 / 2016
MM / DD / YYYY

Chauncey Kelly
Signature

Print the name of the person who is completing and signing this claim:

Name: Chauncey (First name) Thomas Patrick (Middle name) Kelly (Last name)

Title: Section Chief re- Quendall Terminals Site

Company: National Oceanic and Atmospheric Administration
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address: 1315 (Number) East-West Highway, SSMC3, Room 15107 (Street)
Silver Spring (City) MD (State) 20910 (ZIP Code) USA (Country)

Contact phone: 301-713-7440 Email: Chauncey.Kelly@noaa.gov

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
Vertellus Specialties, Inc., et al.,	)	Case No. 16-11290 (CSS)
	)	
Debtors.	)	Jointly Administered
	)	

PROOF OF CLAIM OF THE UNITED STATES OF AMERICA, ON BEHALF OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, THE UNITED STATES DEPARTMENT OF THE INTERIOR AND THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION AND ADMINISTRATIVE EXPENSE CLAIM OF THE UNITED STATES ON BEHALF OF EPA

1. The United States of America (the "Government" or "United States") files this Proof of Claim at the request of the United States Environmental Protection Agency ("EPA"), the United States Department of the Interior ("DOI") and the National Oceanic and Atmospheric Administration ("NOAA"), against debtor Vertellus Specialties, Inc., et al, ("Debtor" or "Vertellus") for the recovery of: (i) response costs incurred and to be incurred by the Government under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9601-9675; and (ii) natural resource damages and assessment costs. In addition, with respect to equitable remedies that are not within the Bankruptcy Code's definition of "claim," 11 U.S.C. § 101(5), this Proof of Claim is filed only in a protective fashion.

2. In addition, the United States files this Claim for Administrative Expenses, as discussed below. As explained below, this claim is filed in a protective manner.

CERCLA LIABILITY

3. Debtor is liable to the Government under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), with respect to the: (i) Miley Avenue Site, Indianapolis, Indiana; (ii) Tibbs Avenue Superfund Site, Indianapolis, Indiana; (iii) Joppa Site, Joppa, Illinois; (iv) Diamond Alkali Superfund Site, New Jersey; (v) St. Louis Park Superfund Site, Minnesota; (vi) Cleveland Site, Cleveland, Ohio, (vii) Dover Superfund Site, Dover, Ohio; (viii) Lima Site, Lima, Ohio; (ix) Provo Coal Tar Refinery Site, Provo, Utah; (x) Quendall Terminals Superfund Site, Renton, Washington; and (xi) Big John's Salvage Superfund Site, Fairmont, West Virginia; (collectively, the "Sites"). CERCLA Section 107(a), 42 U.S.C. § 9607(a), provides in pertinent part as follows:

> Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section —
>
> (1) the owner and operator of a vessel or a facility
>
> (2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,
>
> (3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person ... at any facility ... owned or operated by another party or entity and containing such hazardous substances, and...
>
> from which there is a release [of a hazardous substance], or a threatened release which causes the incurrence of response costs ... , shall be liable for —
>
> ...all costs of removal or remedial action incurred by the United States Government ...not inconsistent with the national contingency plan
>
> ***
>
> The amounts recoverable in an action under this section shall include interest on the amounts recoverable under [the foregoing provisions]...

4. Each of the Sites is a "facility" from which there have been actual and threatened "releases" of "hazardous substances" that have caused, and will continue to cause, the Government to incur costs of "response" not inconsistent with the National Contingency Plan, 40 C.F.R. Part 300—all within the meaning of CERCLA Sections 101(9), 101(14), 101(22), 101(25), 102(a), and 107(a),42 U.S.C. §§ 9601(9), 9601(14), 9601(22), 9601(25), 9602(a), and 9607(a). Debtor (or a predecessor) owned or operated certain Sites at the time of disposal of hazardous substances there, within the meaning of CERCLA Section 107(a)(2), 42 U.S.C. § 9607(a)(2). In addition, Debtor (or a predecessor) arranged for disposal of hazardous substances at certain Sites, or arranged for transport of hazardous substances for disposal at certain Sites, within the meaning of CERCLA Section 107(a)(3), 42 U.S.C. § 9607(a)(3). Pursuant to CERCLA Section 107(a), 42 U.S.C. § 9607(a), Debtor is jointly and severally liable to the Government, along with other parties, for all response costs incurred and to be incurred by the Government in connection with the Sites, plus interest.

Miley Avenue Site, Indianapolis, IN

5. The Miley Avenue Site is a 3 to 5-acre site located at 737 Miley Avenue in Indianapolis, Indiana near the White River and adjacent to a railroad.

6. Republic Creosoting Company ("Republic"), a subsidiary of Reilly Tar & Chemical Corporation ("Reilly Tar") owned and operated a coal tar refinery and creosote wood treatment facility at the Miley Avenue Site from 1896 to 1923. Republic distilled creosote and pitch from coal tar and then used the creosote to treat wood products, including wood paving blocks. The facility had pitch tanks, oil tanks, retorts, pressure cylinders, and a saw mill and some parts of it had earthen floors. According to a 1985 Site Inspection Report, which included interviews with Reilly personnel, site operations occurred until the 1940s.

7. Coal tar is a dark, oily, viscous material, consisting mainly of hydrocarbons and it contains a large number of organic compounds, such as benzene, naphthalene, and phenols. Crude tar also contains polycyclic aromatic hydrocarbons, like benzo(a)pyrene. These substances are "hazardous substances" within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), because they are listed at 40 C.F.R. § 302.4.

8. A recent site walk identified tar on the ground at the Site. Due to the timeframe, type and location of operations at the Site, it is likely that discharges of hazardous substances occurred causing soil and groundwater contamination. Given similar operations and the location close to the White River, it is likely that the Miley Avenue Site will undergo cleanup similar to the cleanup of the southern portion of Tibbs Avenue where similar operations occurred which were conducted by Vertellus and/or its predecessor. This cleanup is likely to include soil removal, offsite incineration of contaminated soil with replacement of clean fill, and capping to prevent direct contact with any remaining contamination. It will likely also include a groundwater collection and treatment system, with long-term monitoring.

9. Vertellus is a successor to Reilly Tar & Chemical Corporation. Pursuant to CERCLA Section 107(a)(1) and (a)(2), 42 U.S.C. § 9607(a)(1) and (a)(2), Vertellus is liable as a current owner and as owner and operator of a facility at a time of disposal of hazardous substances.

10. The final remedy for the Miley Avenue Site has not yet been selected. Although the final remedy has not been selected, it is likely that the costs of implementing a cleanup at the Miley Avenue Site are substantial. EPA estimates that the present value (2016 dollars) of cleanup-related costs at the Miley Avenue Site is $16,822,445.

11. If the Miley Avenue Site remains unremediated, there is a potential that groundwater contamination exists at the Miley Avenue Site and could migrate offsite and impact adjacent properties.

12. This Proof of Claim is filed for all future response costs, plus interest, for which Vertellus is liable to the United States in connection with the Miley Avenue Site pursuant to CERCLA Section 107(a), 42 U.S.C. § 9607(a).

South Tibbs Avenue Site, Indianapolis, IN

13. Debtor previously owned the 120-acre South Tibbs Avenue Site located at 1500 South Tibbs Avenue in Indianapolis, Indiana.

14. Starting in the early 1920s, the southern portion of the Site was the location of a coal tar distillation and wood treatment facility owned and operated by Republic, a subsidiary of Reilly Tar. Republic operated a coal tar refinery and a creosote wood treatment operation at the Site from 1921 to 1971. Republic's South Tibbs facility treated wood for use as paving blocks, railroad ties, and utility poles. Starting in 1941, a specialty chemical manufacturing facility owned and operated by Reilly Tar and, later, by Vertellus Specialties, Inc., operated at the Site, primarily in the northern parcel but also on the southern parcel.

15. There have been significant releases of organic and inorganic contaminants such as benzene, pyridine and pyridine derivatives ammonia and carcinogenic PAHs, and other hazardous substances to the soil and groundwater at the Site during the period of Reilly Tar's and Vertellus' operations at the Site.

16. Between June 30, 1992 and June 30, 1997, EPA issued four separate Records of Decision ("RODs") for the Site, for five separate areas of the Site known as "Operable Units" ("OUs"). In

general, the RODs for the five OUs required Vertellus to control sources of groundwater contamination on site by treating and/or removing contaminated soils and disposing them off site, stabilizing contaminated soils on site, and placing soil, gravel, and concrete covers over contaminated areas of the Site. EPA's remedies also included the installation of a groundwater containment system that prevents contaminated groundwater at the Site from migrating beyond the eastern boundary of the Site. The continued operation of the groundwater containment system is necessary to prevent contaminated groundwater from migrating into the residential area to the east of the Site, and from reaching Eagle Creek. EPA's selected remedy also includes procedures to monitor off-site groundwater to ensure it does not pose unacceptable risks to human health and the environment.

17. At this Site, Debtor is required by two separate federal judicial Consent Decrees to continue the operation of a groundwater containment system to treat a plume of contaminated groundwater at the property, and prevent it from migrating outside the property into adjacent aquifers underlying nearby residential areas, and to pay EPA's costs incurred in overseeing the work done pursuant to the Consent Decrees. *U.S. v. Reilly Industries, Inc.,* No. IP93-1945 C (S.D. Ind. Aug. 19, 1993); *U.S. v. Reilly Industries, Inc.,* No. IP93-1945 C M/S (S.D. Ind. Nov. 12, 1998).

18. A June 30, 1992 ROD provides that Vertellus must continue operating the system until groundwater performance standards are met at the eastern perimeter of the property. EPA anticipates that, in order to protect public health and the environment, the groundwater containment system will have to be operated indefinitely. The annual cost of operating the remedy is $205,000. As required by the Consent Decrees, Vertellus established $1.8 million in financial assurance, in the form of a letter of credit, for the continued operation of the

groundwater containment system. The United States estimates that these funds will not be sufficient to keep the system operational.

19. Vertellus is a successor to Reilly Tar. Pursuant to CERCLA Section 107(a)(2), 42 U.S.C. § 9607(a)(2), Vertellus is liable as an owner and operator of a facility at a time of disposal of hazardous substances.

20. EPA anticipates that additional response actions will be conducted at the Tibbs Avenue Site and that it will continue to incur costs in connection with overseeing those response actions which include the operation of a groundwater containment system to treat a plume of contaminated groundwater at the property, and prevent it from migrating outside the property into adjacent aquifers underlying nearby residential areas. Debtor sold the Tibbs Avenue Site in an asset sale to the stalking horse purchaser, which closed on October 31, 2016. The new owner agreed to take over the work, but did not agree to sign on to the Consent Decrees.[1] Thus, Vertellus is still bound to comply with the Consent Decrees, and is jointly and severally liable with the new owner with respect to the Tibbs Avenue Site. The present value (2016 dollars) of

[1] Paragraph 8 of the Settlement Agreement between Debtors, EPA and the States provides: Purchaser will not sign or otherwise become a party to the Tibbs Avenue Superfund Site Consent Decrees; provided, however, that Purchaser will comply with the Tibbs Avenue Superfund Site Consent Decrees, including provisions requiring the maintenance of financial assurance; and provided further, that EPA and IDEM shall continue in good faith to consider approving air sparging as an alternative remedy with respect to the Tibbs Avenue Superfund Site and entering into a new agreement with the Purchaser that will replace the Tibbs Avenue Superfund Site Consent Decrees. EPA and IDEM shall continue in good faith to process Debtors', and post-Closing Purchaser's adopted, request to modify the current remedy for onsite groundwater (Operable Unit 1) of the Tibbs Avenue Superfund Site in the ordinary course in good faith for the benefit of Debtors and Purchaser, as applicable. The Parties retain all rights and defenses under nonbankruptcy law. *In Re Vertellus Specialties Inc., et al*, Case 16-11290-CSS, Docket No. 466 – Order Approving Settlement Agreement Among the Debtors, Purchaser, the Committee and the EPA in Connection with the Sale of Substantially All of the Debtors' Assets.

the continued response actions, including operation of the groundwater containment system at the site and oversight cost for a 100-year period is $19,231,054. EPA has incurred pre-petition past costs in the amount of $182,409.92 and post-petition costs in the amount of $28,566.17. EPA's response actions and costs incurred with respect to the Tibbs Site are not inconsistent with the National Contingency Plan. This Proof of Claim includes all such unreimbursed costs. The United States reserves the right to amend this Proof of Claim to update its calculation of unreimbursed response costs with respect to the Tibbs Site.

21. This Proof of Claim is filed for all unreimbursed pre-petition past costs and future response costs, plus interest, for which Vertellus is liable to the Government in connection with the Tibbs Avenue Site pursuant to CERCLA Section 107(a), 42 U.S.C. § 9607(a).

22. This Proof of Claim is filed in a protective fashion as to any work obligations of Vertellus under the above referenced Consent Decrees with EPA. *See Protective Filing for Work Obligations*, below.

Joppa Site, Joppa, IL

23. The Joppa Site is a former wood preservation facility located in southern Massac County, Illinois. The Site is approximately 230 acres and is situated less than a mile east of the Village of Joppa along the northern bank of the Ohio River.

24. Republic Creosoting Company ("Republic"), a subsidiary of Reilly Tar & Chemical Corporation ("Reilly Tar") leased land and conducted timber treating and creosoting activities at the Site, beginning in the mid-1920s and continuing until 1945. Creosote is a hazardous substance within the meaning of 42 U.S.C. § 9601(14). At Joppa, Republic Creosoting would heat untreated wood ties in a retort to strip them of moisture and then apply creosote oil and tars under pressure. Treated ties were then removed from the treatment equipment and stacked for

later shipment by rail. Residual impacts from releases of hazardous substances during the period of Republic Creosoting's wood-treating operations, including the presence of creosote material and non-aqueous phase liquids, are present in the Retort and Drip Area, Western Drainage Area, Lagoon Area, and an off-site area.

25. Releases of creosote by Republic Creosoting at the Joppa Site constitute a release or threatened release of hazardous substances within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. Section 9607(a)(2).

26. Vertellus is a successor to Reilly Tar. Pursuant to CERCLA Section 107(a)(2), 42 U.S.C. § 9607(a)(2), Vertellus is liable as operator of a facility at a time of disposal of hazardous substances. The owner of the land was a predecessor to Union Pacific Railroad Company.

27. In 2007, Vertellus and Union Pacific entered into a Consent Order with the State of Illinois to address releases and threatened releases of hazardous substances at the Joppa Site in accordance with CERCLA requirements.[2] The Consent Order requires Vertellus and Union Pacific to complete a Remedial Investigation and Feasibility Study for the Site.

28. The final remedy for the Joppa Site has not yet been selected. Vertellus conducted a Remedial Investigation in 2011 at the direction of the State of Illinois. Vertellus, Union Pacific, and the State of Illinois are currently working on a Risk Assessment and Feasibility Study. Although the final remedy has not yet been selected, it is likely that the costs of implementing a cleanup at the Joppa Site are substantial. Likely Site costs include completion of a series of studies, excavation of hotspots, capping of the surface, draining and backfilling the lagoon, deed restrictions, groundwater monitoring, site inspection, maintenance, and oversight.

---

[2] Joslyn Manufacturing Company, a subsequent lessee at the Site, was also listed as a Settling Defendant in the 2007 Consent Order, though Joslyn Manufacturing Company does not share a portion of the liability and was not an active participant in the execution of the Consent Order.

29. EPA estimates that the present value (2016 dollars) of cleanup-related costs at the Joppa Site is $9,329,075. Vertellus bears 80% of costs at the Joppa Site and Union Pacific bears the remaining 20% of costs. EPA estimates that the present value (2016 dollars) of Vertellus' share of cleanup-related costs at the Joppa Site is $7,463,260.

30. If the Joppa Site is not remediated, there is potential that soil contamination on site could impact human health and the environment.

31. This Proof of Claim is filed for all future response costs, plus interest, for which Vertellus is liable to the United States in connection with the Joppa Site pursuant to CERCLA Section 107(a), 42 U.S.C. § 9607(a).

St. Louis Park Superfund Site, MN Site

32. The St. Louis Park Superfund Site is an 80-acre site on U.S. Highway 7 and Louisiana Avenue in St. Louis Park, Minnesota.

33. From 1917 to 1972, the Site was the location of a coal tar distillation and wood treatment facility owned and operated by Republic, a subsidiary of Reilly Tar.

34. Vertellus is a successor to Reilly Tar. Pursuant to CERCLA Section 107(a)(2), 42 U.S.C. § 9607(a)(2), Vertellus is liable as an owner and operator of a facility at a time of disposal of hazardous substances.

35. There were significant releases of wastes containing coal tar and distillation by-products operated to distill coal tar and treat wood products, including PAHs, some carcinogenic PAHs, phenols, and benzene to the soil and groundwater at the Site during the period of Reilly Tar's operations.

36. Between June 6, 1984 and June 30, 1995 EPA issued several RODs to identify the cleanup actions required to address the contamination of the soil and groundwater. In general,

the RODs required Reilly Tar to pump and treat water for the City's water supply and gradient control, control source area groundwater and control further migration of groundwater through gradient control pumping, drain and cover source materials remaining on site, and monitor groundwater contamination.

37. On September 5, 1986, the United States and Reilly Tar entered into a Consent Decree and Remedial Action Plan requiring Reilly Tar to implement the remedial action, to which Vertellus, is the corporate successor. *U.S. v. Reilly Tar & Chemical Corp.*, Civ. No. 4-80-469 (D. Minn. Sept. 5, 1986).

38. Reilly Tar entered into a separate agreement with the City of St. Louis Park, in which the City undertook most of Reilly Tar's obligations at the Site, in exchange for a limited fund from Reilly Tar. The United States is not a party to this agreement and Debtor is not relieved from compliance with the federal Consent Decree. Under the Consent Decree, Remedial Action Plan and RODs, Vertellus is required to continue monitoring groundwater, pumping source control wells, pumping gradient control wells, treating Site-related contaminants for municipal drinking water, and implementing institutional controls. If implementation of the remedial actions were interrupted, contaminants at the Site could spread further off-site and contaminate deeper aquifers, including aquifers used by neighboring cities for drinking water.

39. The remedy for the St. Louis Park Superfund Site is now under continued operation and maintenance ("O&M"), which is expected to continue indefinitely due to the remaining source contamination on site and the risk to drinking water supplies. The present value (2016 dollars) of future costs at the St. Louis Park Superfund Site for a 100 year period is $49,543,758 based on historic operating costs of $600,000 per year.

40. Debtor has established a Letter of Credit in the amount of $238,000 in financial assurance for operations and maintenance work at the Site. However, costs for continued operation of the groundwater containment and monitoring system will exceed the Letter of Credit within the first year of operation.

41. This Proof of Claim is filed for all future response costs, plus interest, for which Vertellus is liable to the United States in connection with the St. Louis Park Site pursuant to CERCLA Section 107(a), 42 U.S.C. § 9607(a).

42. This Proof of Claim is filed in a protective fashion as to any work obligations of Vertellus under the above referenced Consent Decree with EPA. *See Protective Filing for Work Obligations*, below.

Lower Passaic River Study Area of Diamond Alkali Superfund Site, New Jersey

43. The Diamond Alkali Superfund Site ("Diamond Alkali Site") consists of a former pesticides manufacturing facility located at 80 Lister Avenue and surrounding property located at 120 Lister Avenue in Newark, New Jersey ("Lister Avenue facility"); the lower 8.3 miles of the Lower Passaic River Study Area ("LPRSA"); the 17-mile LPRSA; the Newark Bay Study Area, which includes Newark Bay and portions of the Hackensack River, the Arthur Kill, and the Kill Van Kull; and the areal extent of contamination. The soil, sediment, surface water, and groundwater at the Diamond Alkali Site contain hazardous substances within the meaning of CERCLA Sections 101(14) and 102(a), 42 U.S.C. §§ 9601(14) and 9602(a).

44. Vertellus is the successor of Reilly Industries, Inc., ("Reilly"). Reilly owned and operated a facility from which hazardous substances were released into the LPRSA. Accordingly, Vertellus was the owner and/or operator of a facility at the time of disposal of hazardous substances at the Diamond Alkali Site, and arranged for disposal of hazardous substances at the

Diamond Alkali Site, within the meaning of CERCLA Sections 107(a)(2) and (a)(3), 42 U.S.C. §§ 9607(a)(2) and (a)(3).

45. Reilly owned and operated a coal tar refinery, a tar acid plant, and a phenolic resin plant at 191 Doremus Avenue in Newark, NJ from 1932 until 1955, when it was sold to Pittsburgh Consolidated Coal Company. The facility was located adjacent to the Passaic River. Hazardous substances Reilly identified as likely associated with the coal tar refining process at the former facility include phenanthrene, anthracene, flouranthene, pyrenem benzo(a)anthracene, chrysene, benz0(g.h.i)perylene, dibenzofurans, fluorine, 2-Methylnaphthalene and traces of lead and zinc.

46. Wastewater from this Reilly facility was discharged to the City of Newark's sanitary sewer system during the entire period Reilly operated its facility. The wastewater was not treated before being discharged into the combined sewer line on Doremus Avenue that paralleled Roanoke Avenue, known, as the Roanoke sewer. The Passaic Valley Sewerage Commission (PVSC) also deliberately bypassed the Roanoke sewer to an outfall that discharged directly into the Passaic River, from 1948 forward, in order to prevent the contents of the trunk line from backing up into facilities connected to the sewer line. Any wastewater from the Reilly facility during this period would have been discharged into the Passaic River and not the sewer trunk. A PVSC inspector also observed yard drainage at the Reilly facility containing oil and tar discharging into a storm drain and then into the Passaic River after heavy rains. In addition, a drainage ditch located on the northern end of the Reilly facility containing material was discharged into the Passaic River, resulting in a plume on the water.

47. The contaminants found in the sediments of the Passaic River near the Roanoke Avenue outfall, also include phenanthrene, flouranthene and pyrene, which are chemicals Reilly has

indicated it used at its former facility. They are PAHs and are hazardous substances under CERCLA.

48. As a result of the discharges described above, Vertellus, as successor to Reilly, arranged for disposal of hazardous substances at the Diamond Alkali Site, within the meaning of CERCLA Section 107(a)(3), 42 U.S.C. § 9607(a)(3), and was the owner and/or operator of a facility at the time of disposal of hazardous substances at the Diamond Alkali Site, within the meaning of CERCLA Section 107(a)(2), 42 U.S.C. § 9607(a)(2).

49. On June 22, 2004, EPA entered into a settlement agreement with 31 potentially responsible parties ("PRPs"), including Reilly that required the settling PRPs to fund an RI/FS being conducted by EPA at certain areas of the Diamond Alkali Site and reimburse EPA for certain past and future response costs. The 2004 Agreement was amended on November 9, 2005 and August 28, 2007, to add additional PRPs. In addition, on May 8, 2007 EPA entered into a separate Administrative Order on Consent (AOC) that provided for the settling PRPs, including Vertellus signing as "Vertellus Inc. f/k/a Reilly Industries, Inc…" to take over the performance of the RI/FS from EPA and to reimburse certain future costs incurred by EPA, including EPA's costs of overseeing the performance of the RI/FS. The settling PRPs are jointly and severally liable under both the June 22, 2004 settlement agreement, as amended, and the May 8, 2007 AOC.

50. In mid-2006, EPA began studying the possibility of taking early action in the LPRSA, in the part of the river close to the Lister Avenue facility and Newark Bay, where the majority of the contaminated sediments are located. EPA began a Focused Feasibility Study ("FFS") for this portion of the LPRSA. In April 2014, EPA completed and issued a Remedial Investigation ("RI") and the FFS and proposed plan for the lower 8.3 miles of the LPRSA. EPA issued a

Record of Decision for the lower 8.3 miles of the LPRSA on March 3, 2016. The selected remedy includes the following elements: 1) an engineered cap will be constructed bank to bank over the river bottom of the lower 8.3 miles; 2) before the cap is placed, the river will be dredged bank-to-bank (approximately 3.5 million cubic yards) so the cap can be placed without increasing flooding and to allow for continued commercial use of the federally authorized navigation channel in the 1.7 miles of the river closest to Newark Bay; 3) dredged materials will be barged or pumped to a sediment processing facility in the vicinity of the Lower Passaic River/Newark Bay shoreline for dewatering, and dewatered materials will be transported to permitted treatment facilities and landfills in the United States or Canada for disposal; 4) mudflats dredged during implementation of the remedy will be covered with an engineered cap consisting of one foot of sand and one foot of mudflat reconstruction substrate; 5) institutional controls will be implemented to protect the engineered cap, and New Jersey's existing prohibitions on fish and crab consumption will remain in place and will be enhanced with additional community outreach; 6) long-term monitoring and maintenance of the engineered cap will be required to ensure its stability and integrity; and 7) long-term monitoring of fish, crab and sediment will be performed to determine when interim remediation milestones, remediation goals and remedial action objectives are reached. The cost estimate for the cleanup is approximately $1.38 billion.

51. On September 30, 2016, EPA entered into an agreement with Occidental Chemical Corporation to design the remedy for the lower 8.3 miles of the LPRSA. The design of the remedy is estimated to cost $165 million and is included in the estimated cost of the $1.38 billion remedy.

52. In addition to the CPG-lead RI/FS AOC, Vertellus is a signatory to an AOC requiring performance of a time-critical removal action at River Mile 10.9 ("RM 10.9") of the LPRSA ("Removal AOC"). The settling parties to the AOC are jointly and severally liable for the removal action. The removal action involved the dredging of approximately 16,000 cubic yards of contaminated sediment in a mud-flat at RM 10.9 and installation of a cap. The work is mostly complete, except for the development and implementation of a long-term monitoring plan. In addition, an area in the middle of the mudflat has not yet been dredged because of the presence of a water line that is underneath this area.

53. As of August 31, 2015, EPA had incurred approximately $42.6 million in unreimbursed response costs in connection with the Diamond Alkali Site. EPA has incurred additional response costs since that time, and expects to incur response costs in the future. As stated above, the cleanup for the lower 8.3 miles plan is estimated to cost approximately $1.38 billion. EPA has not yet selected a remedy for the 17-mile study area, which is still being studied by the PRPs pursuant to the 2007 AOC. Vertellus is jointly and severally liable for all unreimbursed past and future response costs, plus interest, incurred by the Government in connection with the Diamond Alkali Site pursuant to CERCLA Section 107(a), 42 U.S.C. § 9607(a).

54. This Proof of Claim is filed in a protective fashion as to any work obligations of Vertellus under the above referenced administrative agreements with EPA. *See, Protective Filing for Work Obligations,* below.

Cleveland Site, Cleveland, OH

55. The Cleveland Site is an approximately 12-acre site located at 3201 Independence Road in Cleveland, Ohio which was historically operated as a coal tar processing facility by Reilly Tar. Site work has included construction of a berm and groundwater sampling.

56. Reilly Tar purchased the Cleveland Site and began operations in 1937. Facility property operations consisted of processing coal tar from neighboring steel facilities to produce various grades of tars, oils, and pitches that were later transported off-site to customers. This operation was conducted at the facility property for over 60 years without a significant change in operations. The facility ceased all operations in 2000.

57. The Ohio Environmental Protection Agency (OEPA) identified PAHs; benzene, toluene, ethylbenzene, and xylene compounds (BTEX compounds); arsenic; and mercury as contaminants of concern (COCs) for Cleveland Site soils. OEPA identified PAHs, BTEX compounds, arsenic, barium, nickel, tin, cyanide, and sulfide as COCs for groundwater. Off-site monitoring wells and borings indicate that there is little to no risk to off-site ecological or human receptors. During a Resource Conservation and Recovery Act (RCRA) Facility Investigation conducted at OEPA's direction, Reilly Tar identified non-aqueous phase liquid (NAPL) and dissolved COCs in two monitoring wells on site, as well as dark staining and odors from coal tar distillate in unsaturated and saturated borings completed in the central portions of the property.

58. OEPA notified Vertellus that the Cleveland Site is subject to RCRA Corrective Action requirements on September 5, 2006 based on an OEPA review and determination that Reilly established and operated a hazardous waste management unit on facility property. The unit was an unpermitted storage unit. Reilly submitted a closure plan to OEPA in July 1988 and OEPA certified closure completion in October 1995.

59. Vertellus is currently implementing RCRA corrective action measures under a 2013 OEPA Order. OEPA is the lead environmental enforcement agency at the Cleveland site. EPA will not evaluate the Cleveland Site for listing on the National Priorities List (NPL) while Vertellus is actively implementing corrective action measures. However, EPA has identified

situations when it is appropriate to use CERCLA authorities to address facilities at which necessary corrective actions under RCRA are unlikely to be performed, including facilities owned by bankrupt parties. 51 Fed. Reg. 21,057 (June 10, 1986); 53 Fed. Reg. 23,978 (June 24, 1988); 54 Fed. Reg. 41,000 (Oct. 4, 1989). EPA anticipates Vertellus may become unable to finance the corrective action and the Cleveland Site may need to be addressed through CERCLA authorities.

60. Vertellus is a successor to Reilly Tar. Reilly owned and operated a facility from which hazardous substances were released at the Cleveland Site. Accordingly, Vertellus is the current owner of the Site and also is the owner and/or operator of a facility at the time of disposal of hazardous substances at the Cleveland Site, within the meaning of CERCLA Sections 107(a)(1) and (a)(2), 42 U.S.C. §§ 9607(a)(1) and (a)(2).

61. PAHs and BTEX compounds derived from the coal tars, oils, and pitches that Reilly Tar used for coal tar distillation at the Cleveland property are listed hazardous substances within the meaning of Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). Pursuant to CERCLA Section 107(a)(1) and (a)(2), 42 U.S.C. § 9607(a)(1) and (a)(2) Vertellus is liable as a current owner and as owner and operator of a facility at a time of disposal of hazardous substances. Based upon information obtained during the RCRA corrective action, the present value (2016 dollars) of total costs for the expected future work is $297,315.

62. Reilly established, and Vertellus continued, a Standby Letter of Credit and Standby Trust Agreement for this Site which is currently in the amount of $251,998 to the benefit of the Ohio. The financial assurance covers the cost of five years of groundwater monitoring, estimated at $5,000 per year. State regulatory staff indicates there is a need for an additional 30 years of post-closure monitoring, at the same cost.

63. If the Cleveland Site remains unremediated, there is potential that contaminated soil and groundwater at the Cleveland Site could affect future workers at the Site.

64. This Proof of Claim is filed for all future response costs, plus interest, for which Vertellus is liable to the United States in connection with the Cleveland Site pursuant to CERCLA Section 107(a), 42 U.S.C. § 9607(a).

65. This Proof of Claim is filed in a protective fashion as to any work obligations of Vertellus to perform work under RCRA or other applicable law. *See, Protective Filing for Work Obligations*, below.

Dover Superfund Site, Dover, OH

66. The Dover Superfund site is a 3.66-acre property located in Dover, Ohio, and the former location of a coal tar refinery that was owned and operated from the early 1920s through 1956 by Reilly Tar, predecessor to Debtor.

67. There were significant releases of volatile organic compounds including benzene, toluene, ethylbenzene, and xylenes; semivolatile organic compounds, including PAHs; and other hazardous substances to the soil and groundwater at the Site during the period of Reilly Tar's operations at the Site.

68. The site was placed on the NPL in 1990, and EPA issued a ROD in 1997 setting forth the remedy for the Site which included excavation and off-site treatment of sediment, offsite disposal of tar waste, onsite disposal of contaminated soils and sediment, capping, long-term groundwater monitoring and groundwater control and collection.

69. In 1998, the United States and Reilly Industries, Inc. entered into a Consent Decree requiring Reilly Industries, Inc., to implement EPA's selected remedy for the Site. *U.S. v. Reilly Industries, Inc.*, No. 5-93-1409 (N.D. Ohio Jun. 18, 1998).

70. The Consent Decree required Reilly to continue operating the groundwater treatment system and the long-term groundwater monitoring system until cleanup goals are achieved. Since 2000, Reilly Industries, and then its successor Vertellus Specialties, Inc., operated and maintained the groundwater treatment and groundwater monitoring systems and also upgraded the groundwater recovery trench. In the last five years, tar derived material has been detected in monitoring at the Site property boundary and contamination has been detected in the groundwater at levels posing a risk to human health. Vertellus established a Letter of Credit at this Site in the amount of $1.2 million in the event that EPA takes over the operation and maintenance work at the Site, but this will not be sufficient to cover the expected future cleanup costs.

71. The Site is currently in the O&M phase, which is estimated to continue for 50 years. Annual groundwater treatment and monitoring costs are estimated at $140,000 based on historical costs. Additional disposal fees will be incurred in the future to dispose of free product waste material collected from the groundwater (recently 110 barrels per year), increasing the total estimated costs to $150,000 per year and declining by 5 percent per year as the volume of collected material is expected to decline. Additional institutional controls are also required for land-use restrictions on adjacent properties, estimated to cost $30,000 in order to protect human health. The present value (2016 dollars) of expected future costs at the Dover Superfund Site is estimated at $11,782,510.

72. This Proof of Claim is filed for all future response costs, plus interest, for which Vertellus is liable to the United States in connection with the Dover Superfund Site pursuant to CERCLA Section 107(a), 42 U.S.C. § 9607(a).

73. This Proof of Claim is filed in a protective fashion as to any work obligations of Vertellus under the above referenced Consent Decrees with EPA. *See, Protective Filing for Work Obligations*, below.

Lima Site, Lima, OH

74. The Lima Site is a former wood preservation facility located at 1403 Neubrecht Road, Lima, Ohio. The Site is approximately 55 acres and is situated on the northeast side of Lima, Ohio in an industrial area.

75. Reilly Industries owned and operated the Lima Site from 1938 to 1972. At the facility, Reilly treated wood with creosote oil for use as railroad ties, telephone poles, pilings, and more. Reilly would heat wood in a retort to strip it of moisture and then apply creosote oil and tars under pressure. The treated wood was then removed from the treatment equipment and stacked for later shipment by rail. Wastewater discharged from the Site through a series of ditches and culverts to the Ottawa River, approximately one mile south of the Site.

76. In 1996, material resembling creosote was discovered in the drainage ditch, prompting a remedial action in 1998 by Reilly to line 350 feet of the drainage ditch with concrete. OEPA and U.S. EPA conducted an integrated assessment of the Site, including sampling in 1999, memorialized in a 2000 report. Creosote-related substances; PAHs; and benzene, toluene, ethylbenzene, and xylene (BTEX) compounds were detected in sediment at the Site, the ditch, and in the Ottawa River. PAHs and BTEX compounds were also detected in soil at the Site, near the old process line and the former dip pit.

77. Vertellus is a successor to Reilly Tar & Chemical Corporation. Creosote, PAHs, and BTEX compounds are hazardous substances within the meaning of 42 U.S.C. § 9601(14) that Reilly used for wood preservation at the Lima Site and have contaminated the Site, thereby

constituting a release or threatened release of hazardous substances at or from the Lima Site within the meaning of CERCLA Section 107(a), 42 U.S.C. § 9607(a). Pursuant to CERCLA Section 107(a)(1) and (a)(2), 42 U.S.C. § 9607(a)(1) and (a)(2) Vertellus is liable as a current owner and as owner and operator of a facility at a time of disposal of hazardous substances.

78. If the Lima Site is not remediated, there is potential that groundwater contamination exists at the Lima Site and could migrate offsite and impact adjacent properties. The final remedy for the Lima Site has not yet been selected. Although the final remedy has not been selected, it is likely that the costs of implementing a cleanup at the Lima Site are substantial. Likely Site costs include completion of a series of studies, excavation of hotspots, backfilling of excavated areas, soil covers, groundwater monitoring, and oversight. EPA estimates that the present value (2016 dollars) of expected future response costs at the Lima Site is $18,925,675.

79. This Proof of Claim is filed for all future response costs, plus interest, for which Vertellus is liable to the United States in connection with the Lima Site pursuant to CERCLA Section 107(a), 42 U.S.C. § 9607(a).

Provo Coal Tar Refinery Site, Provo, UT

80. The Provo, Utah Coal Tar Refinery Site ("Provo Site") is located at 2555 South Industrial Parkway in Provo, Utah. A coal tar refinery operated at the Site for nearly eighty years, and the facility's waste disposal practices and various spills resulted in the release of various hazardous substances within the meaning of CERCLA Sections 101(14) and 102(a), 42 U.S.C. § 9601(14) and 9602(a) to the soil, subsurface soil, sediment, groundwater, and occasionally surface water onsite and on the adjacent properties.

81. Vertellus is the current owner of the Provo Site. Vertellus is also the successor to Reilly Industries, Inc. ("Reilly"),[3] which owned the Provo Site during the time of disposal and arranged for disposal of hazardous substances at the Provo Site within the meaning of CERCLA Sections 107(a)(2) and (a)(3), 42 U.S.C. §§ 9607(a)(2) and (a)(3).

82. Operation of the coal tar refinery at the Provo Site began in the mid-1920s and continued through 2001. Vertellus removed all existing structures on the property in 2006, and only concrete foundations remain. The plant and related infrastructure were originally located on the northern portion of the thirty-seven acre property, while the southern portion has been historically vacant. The Provo Site is immediately adjacent to other industrial properties to the east and west, while the properties to the north and south are undeveloped but zoned for industrial use. The Ironton Canal is located along the Provo Site's northern boundary, and the canal ultimately discharges into the Provo Bay of Utah Lake, which is approximately 1.5 miles west of the Provo Site. The surrounding area includes residential property and environmentally sensitive habitat, including wetlands. The closest residential areas are located approximately one-half to one mile east and northeast of the Provo Site.

83. The manufacturing process at the Provo Site involved the distillation of crude coal tar in order to produce a number of oil and tar products, including creosote oil, electrode binder pitch, and various light-end and heavy-end oils. The lighter tar components were separated out by a process of heating and vaporization and through the use of various settling tanks or separators.

---

[3] More specifically, Republic Creosoting Company began operations at the Site in the mid-1920s. The company changed its name to Reilly Tar & Chemical in 1961 and then to Reilly Industries, Inc. in 1989. Arsenal Capital Partners acquired Reilly in September of 2005. In July of 2006, Arsenal merged Reilly with another company to form Vertellus.

84. Wastewater produced during the distillation process contained phenols, sulfides, benzene, cyanide, and PAHs. Such process wastewaters were handled in a number of different ways over the life of the refinery at the Provo Site. Until the early 1970s, all wastewater generated at the Facility was discharged to the Ironton Canal. Subsequently, wastewater was discharged to two impoundments which were located on the property southeast of the plant. From 1981 until 1995, wastewater from the distillation process was discharged to an evaporation pan. The residual sludge left in the evaporation pan was placed in drums for off-site disposal and, from 1986 onward, was recycled for further distillation. Waste from on-site spills that was in solid form was originally placed into long rows on-site. Starting in 1985, such solid waste was placed in drums and stored on-site before removal for off-site disposal.

85. On November 13, 1996, Reilly entered into a Corrective Action Agreement with the Utah Solid and Hazardous Waste Control Board for the investigation and remediation of the contamination at the Provo Site. As the successor to Reilly, Vertellus is now obligated to perform the work under the Corrective Action Agreement.

86. Under the Corrective Action Agreement, Reilly completed an investigation of the contamination at the Provo Site. The investigation revealed highly toxic and persistent carcinogenic semi-volatile organic compounds (specifically, PAHs) and volatile organic compounds (primarily benzene) in the surface and subsurface soil, sediment, groundwater, and occasionally surface water on the Provo Site. Additional information is needed to fully delineate a groundwater plume of contaminants, including benzene, which is on the boundary of the Provo Site and appears to extend onto county and privately owned properties. The contaminants at the Provo Site pose an unacceptable risk of cancer to humans as well as other ecological risks, including risks to both wildlife and plants. In June of 2013, Vertellus requested approval of a

risk assessment to establish Site clean-up levels prior to initiating remediation. Once the Director of the Division of Waste Management and Radiation Control of the Utah Department of Environmental Protection ("the Director") approves the Risk Assessment, the Corrective Action Agreement obligates Vertellus to develop a Corrective Action Plan to remediate the most heavily contaminated areas of the Provo Site and a Site Management Plan to manage the long term exposure risk to human health and the environment posed by the contamination that will remain on-site. After those plans receive approval from the Director, the Corrective Action Agreement requires Vertellus to execute the work described therein.

87. If the Provo Site remains unremediated, the groundwater contamination at the Provo Site could migrate offsite and impact adjacent properties. The risks to various forms of wildlife that have been observed on the property would also continue unmitigated.

88. Cleanup of the Provo Site in compliance with environmental laws is estimated to involve soil excavation, transport and offsite incineration, groundwater control, recovery and monitoring for groundwater contaminants, and canal sediment removal. These measures include continuous and indefinite management procedures. The total remedy, in net present value for 100 years, is $40,915,774. There is no form of financial assurance in place with respect to the Provo Site.

89. EPA retains oversight authority over the Provo Site under the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*, but it has not yet taken any direct action against Vertellus at the Provo Site. However, if Vertellus does not perform the remedy or provide for its performance, the U.S. EPA may undertake the clean-up of the Provo Site under CERCLA. EPA has identified situations when it is appropriate to use CERCLA authorities to address facilities at which necessary corrective actions under RCRA are unlikely to be performed, including

facilities owned by bankrupt parties. 51 Fed. Reg. 21,057 (June 10, 1986); 53 Fed. Reg. 23,978 (June 24, 1988); 54 Fed. Reg. 41,000 (Oct. 4, 1989).

90. This Proof of Claim is filed for all future response costs, plus interest, for which Vertellus is liable to the Government in connection with the Provo Site pursuant to CERCLA Section 107(a), 42 U.S.C. § 9607(a).

91. This Proof of Claim is filed in a protective fashion as to any work obligations of Vertellus under RCRA or other applicable law. *See, Protective Filing for Work Obligations*, below.

Quendall Terminals Site, Renton Washington

92. The Quendall Terminals Superfund Site ("Quendall Site") is located on the southeastern shore of Lake Washington in Renton, Washington. The Quendall Site occupies 22 acres of upland shoreline property and a 29-acre portion of the lake itself.

93. From 1916 until 1969, the Reilly Tar & Chemical Company ("Reilly Tar"), and the Republic Creosoting Company ("Republic"), both corporate predecessors of the Debtors, owned and operated a creosote manufacturing facility at the Quendall Site ("the Reilly facility"). The Reilly facility received coal and oil-gas tars by rail, and at a loading dock that extended into the lake. The facility processed those materials into coal tars and distillate products and shipped them back off-site. The facility's operations released creosote, coal tar, and other dense non-aqueous liquids containing benzene, naphthalene, carcinogenic PAHs, arsenic, and other hazardous substances onto the uplands and aquatic portions of the Site. EPA listed the Quendall Site on the NPL on April 19, 2006, 40 C.F.R. Part 300, App. B, established pursuant to Section 105(a)(8)(B) of CERCLA, 42 U.S.C. § 9605(a)(8)(B).

94. Debtor is the legal successor to Reilly Tar and Republic through a series of corporate mergers. As such, Debtor. is liable for the CERCLA liabilities of both Reilly Tar and Republic at the Quendall Site.

95. Because Reilly Tar and Republic owned and operated a facility at the time hazardous substances were released into the environment at the Quendall Site, within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2), Debtor, as the legal successor to Reilly Tar and Republic, is liable to the United States for all costs incurred in response to releases of hazardous substances at the Site.

96. Through May 29, 2016, EPA has incurred unrecovered response costs of approximately $456,519.00 associated with conducting or overseeing environmental response actions with respect to the Quendall Site. EPA's response actions and costs incurred with respect to the Quendall Site are not inconsistent with the National Contingency Plan. This Proof of Claim includes all such unreimbursed costs. The United States reserves the right to amend this Proof of Claim to update its calculation of unreimbursed response costs with respect to the Quendall Site.

97. EPA anticipates that additional response actions will be conducted at the Quendall Site and that it will continue to incur costs in connection with those response actions. At this time, EPA's proposed cleanup plan estimates the cleanup costs for the Quendall Site to be approximately $199,941,683. This Proof of Claim is filed for all unreimbursed past and future response costs, plus interest, for which Vertellus is liable to the United States in connection with the Quendall Site pursuant to CERCLA Section 107(a), 42 U.S.C. § 9607(a).

Big John's Salvage-Hoult Road Superfund Site, Fairmont, West Virginia

98. The Big John's Salvage-Hoult Road Superfund Site (Big John's Site) is approximately 38 acres and is located along the east bank of the Monongahela River in Fairmont, Marion County,

West Virginia. The Site consists of three areas defined as the upland property, the unnamed Tributary and a portion of the Monongahela River.

99. Reilly Tar, a predecessor to Debtor (Vertellus Specialties, Inc.), owned the Site from 1932 until 1973. Reilly received crude coal tar from the adjacent Sharon Steel-Fairmont Coke Works facility. The coal tar was processed and turned into various products which included creosote, phenol, road tar and naphthalene on the Big John's Site.

100. Coal tar is a dark, oily, viscous material, consisting mainly of hydrocarbons and it contains a large number of organic compounds, such as benzene, naphthalene, and phenols. Crude tar also contains PAHs, like benzo(a)pyrene. PAHs, including naphthalene and benzo(a)pyrene are contaminants of concern at the Big John's Site and are "hazardous substances" within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), because they are listed at 40 C.F.R. § 302.4.

101. During the period of operation by Reilly, historical records document that coal tar wastes and by-products from the Big John's Site were spilled on the ground surface and discharged to a tributary flowing to the Monongahela River.

102. Vertellus is the current owner of a portion of the Big John's Site. Vertellus is also the successor to Reilly Tar which owned the Site and operated a coal tar refinery on the Big John's Site during the time of disposal and arranged for disposal of hazardous substances at the Big John's Site within the meaning of CERCLA Sections 107(a)(2) and (a)(3), 42 U.S.C. §§ 9607(a)(2) and (a)(3).

103. EPA issued an Action Memorandum on September 30, 2010 that documented that soil and groundwater at the Big John's Site and sediments in the Monongahela River, adjacent to the Site, are contaminated with PAH levels that present or may present an imminent and substantial

endangerment to the public health and welfare and/or to the environment and described the response actions necessary to mitigate the endangerment. Debtor and the United States entered a federal Consent Decree memorializing the obligation of Debtor to conduct the cleanup work, including the payment of EPA's costs incurred overseeing the work performed pursuant to the Consent Decree, which was entered by the United States district court on October 10, 2012. *United States, et al. v. ExxonMobil Corporation, et al.*, Civil Action No. 1:08cv124 (N.D. WV 2012).

104. Debtors are required by this federal Consent Decree to conduct cleanup actions on upland property, and in the adjacent Monongahela River at the Big John's Site. This work includes constructing a cap in the contaminated upland area, upgrading a groundwater containment and treatment system in the upland area, excavating tar wastes and contaminated sediments from the Monongahela River and disposing offsite. Activities performed by Debtor to date have been limited to performance pre-design field investigations and maintaining an interim groundwater containment and treatment system. No final engineering design documents have been completed yet and the primary cleanup actions have not been initiated in the field. Debtor continues to maintain an existing groundwater containment and treatment system, but that system has not been upgraded as required.

105. If implementation of the response action were interrupted, contaminated groundwater seeps, currently being captured and treated on-Site could be allowed to flow unabated into an adjacent tributary and downstream to the Monongahela River. In addition, tar wastes and contaminated sediments could be allowed to further migrate in the Monongahela River.

106. EPA has initiated a work takeover at the Site, and in accordance with the Consent Decree, Vertellus is required to pay a $1.5 million stipulated penalty for this work takeover.

Further, the estimated present value of future costs (2016 dollars) of completing the response actions, including indirect and oversight costs, at the Site is $110,354,671.

107. EPA has incurred pre-petition past costs in the amount of $291,509.98 and post-petition costs in the amount of $44,205.44. EPA's response actions and costs incurred with respect to the Big John's Site are not inconsistent with the National Contingency Plan. This Proof of Claim includes all such unreimbursed costs. The United States reserves the right to amend this Proof of Claim to update its calculation of unreimbursed response costs with respect to the Big John's Site.

108. Debtor has established a Letter of Credit in the amount of $10.5 million in financial assurance for the Site. In addition, as of June 30, 2016, a trust exists in the amount of $4,560,449.234 to be used for cleanup at the site which was established by payments from other settling parties at the Site.

109. EPA may call in this Letter of Credit, and will have access to the trust funds for the response actions at the Site. However, the future costs far exceed the total available financial assurance.

110. Vertellus is jointly and severally liable for all unreimbursed stipulated penalties, past and future response costs, plus interest, incurred by the United States in connection with the Big John's Site pursuant to CERCLA Section 107(a), 42 U.S.C. § 9607(a).

111. This Proof of Claim is filed in a protective fashion as to any work obligations of Vertellus under the above referenced Consent Decree with EPA. *See, Protective Filing for Work Obligations*, below.

CLAIM FOR NATURAL RESOURCE DAMAGES AND ASSESSMENT COSTS

112. CERCLA Sections 107(a) and 107(f), 42 U.S.C. § § 9607(a) and 9607(f), provide for the recovery of damages for injury to, or destruction or loss of, natural resources caused by the release of hazardous substances to the environment. Injured resources may include, but are not limited to, birds, mammals, fish, plants, and their supporting habitats. The Government, through NOAA, and DOI, acting as natural resource trustees, is authorized to act on behalf of the public to recover natural resource damages, as well as the reasonable costs of assessing the injury to, or destruction or loss of, natural resources.

Diamond Alkali Superfund Site Natural Resource Damages

113. NOAA and DOI have not yet fully calculated damages relating to hazardous substance and related releases at the Diamond Alkali Superfund Site, including the Lister Avenue facility, the Lower 8.3 miles of the LPRSA, the entire 17 miles of the LPRSA, and the Newark Bay Study Area, However, given the probable natural resource injuries, these projected damages are likely substantial. Pursuant to CERCLA Sections 107(a) and 107(f), 42 U.S.C. §§ 9607(a) and 9607(f), Vertellus is jointly and severally liable to the Government for damages for injury to, or destruction or loss of, natural resources caused by the release of hazardous substances from the Diamond Alkali Superfund Site, including the reasonable costs of assessing such injury, destruction, or loss. In addition, as of July 9, 2016, NOAA had incurred $300,051.83 in unreimbursed costs associated with assessment of natural resource damages at the Site. NOAA and DOI also estimate that they will each incur at least $10 million in performing natural resource damage assessments.

114. This Proof of Claim is filed for all past unreimbursed and future natural resource damage assessment costs, plus interest, for which Vertellus is liable to the United States in connection

with the natural resource damages at the Diamond Alkali Superfund Site pursuant to CERCLA Section 107(a), 42 U.S.C. § 9607(a).

Quendall Terminals Site, Renton Washington Natural Resource Damages

115. The United States Department of the Interior (DOI), and the United States Department of Commerce, National Oceanic and Atmospheric Administration (NOAA), as co-trustees for natural resources at the Quendall Site, have natural resource damages claims against Debtor for the Site.

116. To determine the extent of natural resource damages at the Quendall Site, DOI and NOAA developed a habitat equivalency analysis (HEA) focused on losses and injuries to shoreline and nearshore habitat at the Site, because of its importance as critical rearing and refuge habitat for juvenile Chinook salmon originating from the Cedar River and migrating to Puget Sound. DOI and NOAA identified and quantified in-water habitat at the Quendall Site, PAH concentrations in surface sediments at the Site, and corresponding service-loss thresholds associated with comparable surface sediment PAH concentrations in the nearby and ecologically similar Hylebos Waterway in Puget Sound. Based on this information, DOI and NOAA determined the amount of natural resource service losses that have resulted from releases of hazardous substances at the Quendall Site. DOI and NOAA then used the HEA to determine the amount of compensatory restoration required to compensate for lost habitat services resulting from releases of hazardous substances at the Site. Based on the HEA, DOI and NOAA have determined that the cost of such compensatory restoration will be $58,854,905.

117. Pursuant to CERCLA Sections 107(a) and 107(f), 42 U.S.C. §§ 9607(a) and 9607(f), Debtor, as the legal successor to Reilly Tar and Republic, is liable to the United States for damages for injury to, or destruction or loss of, natural resources caused by the release of

hazardous substances at the Quendall Site, including the reasonable cost of assessing such injury, destruction or loss.

118. As noted above, Debtor is jointly and severally liable for natural resource damage claims for the Quendall Site in the amount of $58,854, 905. In addition, through May 29, 2016, DOI has incurred $19,040.66 in unreimbursed costs for natural resource damages assessment activities at the Quendall Site, and NOAA has incurred $127,367 in unreimbursed costs for natural resource damages assessment activities at the Quendall Site. Vertellus is therefore liable to the United States in the amount of no less than $59,001,312.66, plus interest pursuant to CERCLA Section 107(a), 42 U.S.C. § 9607(a).

PROTECTIVE FILING FOR WORK OBLIGATIONS

119. The Government is not required to file a proof of claim with respect to Vertellus' injunctive obligation to comply with work requirements and compliance obligations imposed by court orders (including Consent Decrees) or by environmental statutes, regulations, administrative orders, licenses, or permits, because such obligations are not claims under 11 U.S.C. § 101(5). Vertellus and any successor entity must comply with such mandatory requirements. The Government reserves the right to take future actions to enforce any such obligations of Vertellus. While the Government believes that its position will be upheld by the appropriate court, the Government has included the aforementioned obligations and requirements in this Proof of Claim in a protective fashion, to safeguard against the possibility that Vertellus will contend that it does not need to comply with such obligations and requirements, and the appropriate court finds that it is not required to do so. Therefore, a protective contingent claim is filed in the alternative for such obligations and requirements, but only in the event that the

appropriate court finds that such obligations and requirements are claims under 11 U.S.C. § 101(5), rather than obligations and requirements that must be complied with. Nothing in this Proof of Claim constitutes a waiver of any rights by the Government or an election of remedies with respect to such rights and obligations.

120. Consistent with the foregoing, this Proof of Claim is also filed in a protective manner with respect to any and all compliance and work obligations of Vertellus under the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6901-6992k. RCRA establishes a comprehensive regulatory program for generators of hazardous waste and for owners and operators of facilities that treat, store, or dispose of hazardous waste. Pursuant to RCRA, EPA has promulgated regulations applicable to generators and owners and operators of hazardous waste management facilities. The federal RCRA implementing regulations are set forth at 40 C.F.R. Part 260 et seq. Pursuant to RCRA Section 3006, 42 U.S.C. § 6926, EPA has authorized certain states to administer various aspects of the hazardous waste management program in such states. Pursuant to RCRA Section 3008(a), 42 U.S.C. § 6928(a), these authorized state hazardous waste management programs are enforceable by EPA. Under RCRA, regulated entities are required to, inter alia, operate in compliance with RCRA regulatory requirements, implement closure and post-closure work and corrective action work, and perform any necessary action with respect to any imminent and substantial endangerment to health or the environment, as required by RCRA and/or RCRA permits, consent decrees, or administrative orders. See, e.g., 42 U.S.C. §§ 6924, 6928, 6973. Vertellus, and any successor entity, are liable for any and all injunctive and compliance obligations that they are required to perform under RCRA, RCRA permits, and RCRA administrative orders. It is the Government's position that a proof of claim is not required

to be filed for such injunctive, compliance, and regulatory obligations and requirements under RCRA.

121. Similarly, consistent with the foregoing, this Proof of Claim is also filed in a protective manner with respect to any and all compliance and work obligations of Debtor under CERCLA as required by consent decrees and administrative orders. 42 U.S.C. §§ 9601-9675. Vertellus and any successor entity are responsible for any and all injunctive and compliance obligations that they are required to perform under CERCLA, which are required pursuant to any federal consent decrees entered pursuant to CERCLA and any administrative orders issued pursuant to CERCLA. It is the Government's position that a proof of claim is not required to be filed for such injunctive, compliance, and regulatory obligations and requirements under CERCLA.

DEBTOR-OWNED SITES

122. Pursuant to 28 U.S.C. § 959(b), Vertellus is required to manage and operate estate property in accordance with non-bankruptcy law, including all applicable environmental statutes and regulations. Further, any successor entity will be subject to liability under environmental law with respect to any property it owns or operates. The Government is not required to file a proof of claim relating to property of the estate other than for: (i) response costs incurred before the petition date; and (ii) civil penalties for days of violations occurring before the petition date. This Proof of Claim is only filed protectively with respect to post-petition liabilities and response costs relating to property of the estate.

CLAIM FOR ADMINISTRATIVE EXPENSES

123. The United States is not required to file an administrative expense claim with respect to Debtor's injunctive obligations to comply with work requirements arising under orders of courts, administrative orders, and other environmental regulatory requirements imposed by law that are

not claims under 11 U.S.C. § 101(5). Debtor and any successor entity must comply with such mandatory injunctive and regulatory and compliance requirements. The United States reserves the right to take future actions to enforce any such obligations of Debtor and any successor entity. While the United States believes that its position will be upheld by the Court, the United States has filed this Request only in protective fashion with respect to such obligations and requirements as indicated herein to protect against the possibility that Debtor will contend that they do not need to comply with any such obligations and requirements and the Court finds that they are not required to do so. In addition, the Debtor may need to incur valid administrative expenses of the estate in order to comply with their injunctive and regulatory compliance requirements. Therefore, the United States is filing this protective administrative expense claim for such obligations and requirements but only in the event that the Court finds that such obligations and requirements are claims under 11 U.S.C. § 101(5) rather than obligations and requirements that Debtor must comply with, and in order to preserve the Debtor's ability to comply with injunctive and regulatory compliance requirements. Nothing in this Request constitutes a waiver of any rights of the United States or an election of remedies with respect to such rights and obligations.

124. The United States is entitled to administrative expense priority for, inter alia, any response costs it incurs with respect to property of the estate after the petition date.

125. After the petition date, EPA incurred $28,566.17 in unreimbursed response costs at the South Tibbs Avenue Site. EPA has incurred additional response costs since that time, and expects to incur response costs in the future. EPA's response actions and costs incurred with respect to the Tibbs Avenue Site are not inconsistent with the National Contingency Plan. The United States reserves the right to amend this Proof of Claim to update its calculation of

unreimbursed costs incurred post-petition, and as such is entitled to administrative expense priority with respect to the Tibbs Avenue Site.

126. Post-petition, EPA has also incurred costs at the Big John's Site in the amount of $44,205.44. EPA's response actions and costs incurred with respect to the Big John's Site are not inconsistent with the National Contingency Plan. This Proof of Claim is filed for all such unreimbursed costs. The United States reserves the right to amend this Proof of Claim to update its calculation of unreimbursed response costs with respect to the Big John's Site.

127. Vertellus has or may in the future have environmental liabilities for properties that are part of its bankruptcy estate and/or for the migration of hazardous substances from property of its bankruptcy estate, including but not limited to the Tibbs Avenue Superfund Site and the Big John's Site.

128. Pursuant to 28 U.S.C. § 959(b), debtors are required to manage and operate estate property in accordance with non-bankruptcy law, including all applicable environmental statutes and regulations. The Debtors may also have administrative expense liability for any post-petition costs, which result from acts or omissions of the Debtors' estate. *See, e.g.*, *Reading Company v. Brown*, 391 U.S. 471 (1968).

129. Except as set forth in the above-referenced Consent Decrees, no judgments have been rendered on the costs that are the subject of this Protective Administrative Expense Request.

130. Other than the above-referenced LOC in favor of EPA at the Big John's Site or other financial assurance, or applicable insurance proceeds or right to setoff, no security interests are held for the claims described in this Protective Administrative Expense Request.

131. This Protective Administrative Expense Request is without prejudice to any right under 11 U.S.C. § 553 to set off, against this Request, debts owed (if any) to the Debtors by EPA or any other federal agency.

ADDITIONAL TERMS

132. This Proof of Claim, aside from the administrative expense claim included herein, is filed as an unsecured non-priority claim, except to the extent: (i) any rights of setoff secure the Government's claims; and (ii) any secured/trust interest exists in insurance proceeds received by Vertellus on account of the Government's claims.

133. The United States is entitled to administrative expense priority for, inter alia, any response costs it incurs with respect to property of the estate after the petition date, as discussed above.

134. This Proof of Claim is also filed to the extent necessary to protect the Government's rights with respect to any insurance proceeds received by Vertellus, and any funds held in escrow by Vertellus, in connection with the matters discussed herein.

135. With respect to any letters of credit and/or other existing financial assurance at any of the Sites discussed above, it is the United States' position that the letters of credit and/or financial assurance are not "property of the estate" and that the United States has a security interest in these funds as beneficiary.

136. This Proof of Claim is without prejudice to any right under 11 U.S.C. § 553 to set off, against this claim, debts owed to Vertellus by any federal agency.

137. The Government has not perfected any security interest on its claims against Vertellus. Except as stated in this Proof of Claim, no judgments against Vertellus have been rendered on the claims set forth herein.

138. No payments to the Government have been made by Vertellus on the claims set forth herein.

139. This Proof of Claim reflects certain known liabilities of Vertellus to the Government. The Government reserves the right to amend this Proof of Claim to assert additional liabilities, including but not limited to liabilities for additional costs for the matters discussed herein.

140. Additional documentation in support of this Proof of Claim is too voluminous to attach, but is available upon request.

Respectfully submitted,

CHARLES M. OBERLY, III
United States Attorney for the District of Delaware

ELLEN SLIGHTS
Assistant United States Attorney

JOHN C. CRUDEN
Assistant Attorney General
Environment & Natural Resources Div.
U.S. Department of Justice

/s/Cara Mroczek
CARA MROCZEK
SEAN CARMAN
THOMAS KOLKIN
Environmental Enforcement Section
Environment & Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
(202) 514-1447
Cara.mroczek@usdoj.gov
Sean.carman@usdoj.gov
Thomas.kolkin@usdoj.gov

ALAN S. TENENBAUM
National Bankruptcy Coordinator
Environmental Enforcement Section
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
(202) 514-5409